S JS 44 (Rev. 12/07) (CAND Rev 1/10)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS				DEFENDANT	S			
Peter M. Kohlstadt				SOLYNDRA, I	LLC			
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)					(I)	N U.S. PLAINTIFF CASES DEMNATION CASES, USE T		не
(a) Ass. and a China Man	ne, Address, and Telephone	Number)		Attorneys (If Know	n)			
Jack A. Raisner, René S. F OUTTEN & GOLDEN LI	LP,	Ruan						
3 Park Ave. 29th Floor Ne Tel: (212)245-1000	ew York, NY 10016							
TIL BASIS OF JURISDIC	CTION (Place an "X" in O	ne Box Only)	Ш. С	ITIZENSHIP OF (For Diversity Cases		NCIPAL PARTIES (F	Place an "X" in One Bo and One Box for Defer	
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2 U.S. Government Defendant	4 Diversity (Indicate Citizenship o	f Parties in Item 111)	Ci	tizen of Another State] 2	2 Incorporated and Princ of Business In An	_	<u> </u>
			Cir	tizen or Subject of a Foreign Country	3 [3 Foreign Nation	6 	☐ 6
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(Excl Veterans)	345 Marine Product	370 Other Fraud		690 Other			810 Selective Ser	vice
153 Recovery of Overpayment of Veteran's Benefits	Liability 350 Motor Vehicle	371 Truth in Len		LABOR		SOCIAL SECURITY	850 Securities/Co Exchange	mmodities/
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REAL PROPERTY	CIVIL RIGHTS	PETITION	VS/	740 Railway Labor A	ct	003 R31 (403(g))	893 Environment	al Matters
210 Land Condemnation 220 Foreclosure	441 Voting	510 Motions to Sentence		790 Other Labor Litig	gation		894 Energy Alloc	
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V. ORIGIN (Place an "X" in One Box Only) Transferred from Transferred from Appeal to District Transferred from 4 Reinstated or Proceeding State Court Appellate Court Reopened (specify) Appeal to District 7 Judge from (specify) Litigation Magistrate								
			you are fi	iling (Do not cite juris	sdiction	al statutes unless diversity	Judgment y):	
VI. CAUSE OF ACTION	VI. CAUSE OF ACTION 28 USC 2104, et seq.							
VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND S COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND S UNDER F.R.C.P.23 CHECK YES only if demanded in complaint: JURY DEMAND: Yes INO								
VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.B. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"								
	IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA							
DATE 09/02/11 SIGNATURE OF ATTORNEY OF RECORD								
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SEF

RICHAHU W WIEKING
CLERK U.S. DISTRICT COURT
OAKLAND CALIFORNI

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

PETER M. KOHLSTADT, on behalf of himself and all others similarly situated,				
Plaintiff,	011 01 107 190			
v.)	Civ. Case No. <u>C11</u> -04403JSC			
SOLYNDRA, LLC				
Defendant.				
CLASS ACTION COMPLAINT for (1) VIOLATION OF WARN ACT 29 U.S.C. § 2101, et seq. and (2) VIOLATION OF CALIFORNIA LABOR CODE § 1400 et seq.				
Plaintiff, PETER M. KOHLSTADT ("Plaintiff"), alleges on behalf of himself and the				
class of those similarly situated as follows:				
<u>NATURE</u>	OF THE ACTION			
1. On or about August 31, 2011, De	efendant ordered mass layoffs and/or a plant			
closings as defined by 29 U.S.C. § 2101(a)(2),	(3), for which it was required to provide 60 days			

advance written notice under the WARN Act to its employees. Defendant began terminating

1	approximate	ly 1,100other similarly situated employees at its facilities in the Freemont,		
2	California ar	ea and elsewhere (the "other similarly situated former employees").		
3	2.	The Plaintiff brings this action on behalf of himself, and approximately 1,100 other		
4	similarly-situ	nated former employees who were terminated in mass layoffs or plant closingsfrom		
5	Defendant's	facilities on or about August 31, 2011, and in the days thereafter. These employees		
6	were not pro	vided 60 days advance written notice of their terminations by Defendant, as required		
7	by the Work	er Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the		
8	"WARN Act	") and the California Labor Code § 1400 et seq. ("CAL WARN Act").		
9	3.	Plaintiff and all similarly situated employees seek to recover 60 days wages and		
10	benefits, pursuant to 29 U.S.C. § 2104, from Defendant.			
11		JURISDICTION AND VENUE		
12	4.	This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1334,		
13	1367, and 29 U.S.C. § 2104(a)(5).			
14	5.	Venue in this Court is proper pursuant to 29 U.S.C. § 2104(a)(5).		
15		THE PARTIES		
16	<u>Plaintiff</u>			
17	6.	Plaintiff Peter Michael Kohlstadt was employed by Defendant as a Research &		
18	Development Engineer and worked at its facility located at 901 Page Avenue, Freemont,			
19	California until his termination on or about August 31, 2011.			
20				
21				
22				
23				

Defendant

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- 2 7. Upon information and belief at all relevant times, Defendant maintained and
- 3 operated its business at its Freemont, California facilities, including those at 47488 Kato Road,
- 4 Fremont, 1055 Page Avenue, Fremont, and maintained and operated other facilities including
- 5 1201 California Circle, Milpitas, California and elsewhere, as that term is defined by the WARN
- 6 Act (collectively the "Facilities").
- 7 8. Upon information and belief and at all relevant times, Defendant Solyndra LLC
- 8 ("Solyndra") is a limited liability company with its principal place of business located at 47488
- 9 Kato Road, Freemont, California, and conducted business in this district.

WARN ACT CLASS ALLEGATIONS

- 9. Plaintiff brings the First Claim for Relief for violation of 29 U.S.C. § 2101 et seq.
- on his own behalf and on behalf of all other similarly situated former employees, pursuant to 29
- 13 U.S.C. § 2104(a)(5) and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or
- 14 reported to one of Defendant's Facilities and were terminated without cause on or about August
- 15 31, 2011, and within 30 days of that date, or were terminated without cause as the reasonably
- 16 foreseeable consequence of the mass layoffs and/or plant closings ordered by Defendant on or
- about August 31, 2011, and who are affected employees, within the meaning of 29 U.S.C. §
- 18 2101(a)(5) (the "WARN Class").
- 19 10. The persons in the WARN Class identified above ("WARN Class Members") are
- so numerous that joinder of all members is impracticable. Although the precise number of such
- 21 persons is unknown, the facts on which the calculation of that number can be based are presently
- within the sole control of Defendant.

1	11.	The identity of the members of the class and the recent residence address of each			
2	of the WARN	N Class Members is contained in the books and records, including electronic			
3	records, of Defendant.				
4	12.	On information and belief, the rate of pay and benefits that were being paid by			
5	Defendant to	each WARN Class Member at the time of his/her termination is contained in the			
6	books and re-	cords, including electronic records, of the Defendant.			
7	13.	Common questions of law and fact exist as to members of the WARN Class,			
8	including, but not limited to, the following:				
9 10		(a) whether the members of the WARN Class were employees of the Defendant who worked at or reported to Defendant's Facilities;			
11 12 13		(b) whether Defendantunlawfully terminated the employment of the members of the WARN Class without cause on their part and without giving them 60 days advance written notice in violation of the WARN Act; and			
14 15		(c) whether Defendant unlawfully failed to pay the WARN Class members 60 days wages and benefits as required by the WARN Act.			
16 17	14.	The Plaintiff's claim is typical of those of the WARN Class. The Plaintiff, like			
18	other WARN	Class members, worked at or reported to one of Defendant's Facilities and			
19	wasterminate	ed without cause on or about August 31, 2011, or within 30 daysof that date, due to			
20	the mass laye	offs and/or plant closings ordered by Defendant.			
21	15.	The Plaintiff will fairly and adequately protect the interests of the WARN Class.			
22	The Plaintiff	has retained counsel competent and experienced in complex class actions, including			
23	the WARN A	Act and employment litigation.			
24	16.	Class certification of these claims is appropriate under Fed. R. Civ. P. 23(b)(3)			
25	because ques	tions of law and fact common to the WARN Class predominate over any questions			
26	affecting onl	y individual members of the WARN Class, and because a class action is superior to			

- other available methods for the fair and efficient adjudication of this litigation particularly in
- 2 the context of WARN Act litigation, where individual plaintiffs may lack the financial resources
- 3 to vigorously prosecute a lawsuit in federal court against a corporate defendant, and damages
- 4 suffered by individual WARN Class members are small compared to the expense and burden of
- 5 individual prosecution of this litigation.
- 6 17. Concentrating all the potential litigation concerning the WARN Act rights of the
- 7 members of the Class in this Court will obviate the need for unduly duplicative litigation that
- 8 might result in inconsistent judgments, will conserve the judicial resources and the resources of
- 9 the parties, and is the most efficient means of resolving the WARN Act rights of all the members
- 10 of the Class.

- 11 18. Plaintiff intends to send notice to all members of the WARN Class to the extent
- required by Rule 23.

CALIFORNIA WARN ACT CLASS ALLEGATIONS

- 14 19. The Class Plaintiff brings the Second Claim for Relief for violation of Labor
- 15 Code § 1401 on behalf of himself and a class of similarly situated persons pursuant to Labor
- 16 Code § 1404and Federal Rules of Civil Procedure, Rule 23(a) and (b), who worked at or reported
- to one of Defendant's Facilities and were terminated without cause on or about August 31, 2011
- and thereafter (the "CAL WARN Class")
- 19 20. The persons in the CAL WARN Class identified above ("CAL WARN Class
- 20 Members") are so numerous that joinder of all members is impracticable. Although the precise
- 21 number of such persons is unknown, the facts on which the calculation of that number can be
- based are presently within the sole control of Defendant.

I	21. On information and benef, the identity of the members of the class and the					
2	recentresidence address of each of the CAL WARN Class Members is contained in the books					
3	and records of Defendant.					
4	22. On information and belief, the rate of pay and benefits that were being paid by					
5	Defendant to each CAL WARN Class Member at the time of his/her termination is contained in					
6	the books and records of the Defendant.					
7	Common questions of law and fact exist as to members of the CAL WARN Class, including, but					
8	not limited to, the following:					
9	(a) whether the members of the CAL WARN Class were employees of the Defendant;					
11 12 13	(b) whether Defendant unlawfully terminated the employment of the members of the CAL WARN Class without cause on their part and without giving them 60 days advance written notice in violation of the CAL WARN Act; and					
15 16 17	(c) whether Defendant unlawfully failed to pay the CAL WARN Class members 60 days wages and benefits as required by the CAL WARN Act.					
18 19	23. The Class Plaintiff's claims are typical of those of the CAL WARN Class. The					
20	Class Plaintiff, like other CAL WARN Class members, worked at or reported to one of					
21	Defendant's Facilities and was terminated on or about August 31, 2011 and thereafter, due to the					
22	closure of the Facilities ordered by Defendant.					
23	24. The Class Plaintiff will fairly and adequately protect the interests of the CAL					
24	WARN Class. The Class Plaintiff has retained counsel competent and experienced in complex					
25	class actions on behalf of employees, including the CAL WARN Act, the federal WARN Act,					
26	other similar state laws, and employment litigation.					

1	25.	Class certification of these Claims is appropriate under Fed. R. Civ. P. 23(b)(3)			
2	because quest	tions of law and fact common to the CAL WARN Class predominate over any			
3	questions affe	ecting only individual members of the CAL WARN Class, and because a class			
4	action superio	or to other available methods for the fair and efficient adjudication of this litigation			
5	- particularly	in the context of CAL WARN Class Act litigation, where individual plaintiffs may			
6	lack the finan	cial resources to vigorously prosecute a lawsuit in federal court against a corporate			
7	defendant, an	d damages suffered by individual CAL WARN Class members are small compared			
8	to the expense	e and burden of individual prosecution of this litigation.			
9	26.	Concentrating all the potential litigation concerning the CAL WARN Act rights			
0	of the member	ers of the Class in this Court will obviate the need for unduly duplicative litigation			
1	that might result in inconsistent judgments, will conserve the judicial resources and the resources				
2	of the parties and is the most efficient means of resolving the CAL WARN Act rights of all the				
3	members of the Class.				
4	27.	The Class Plaintiff intends to send notice to all members of the CAL WARN			
5	Class to the e	xtent required by Rule 23.			
6	•	CLAIMS FOR RELIEF			
7		Federal WARN Act Cause of Action			
9	28.	Plaintiff realleges and incorporates by reference all allegations in all preceding			
20	paragraphs.				
21	29.	At all relevant times, Defendant employed more than 100 employees who in the			
22	aggregate wo	rked at least 4,000 hours per week, exclusive of hours of overtime, within the			
23	United States				

- 1 30. At all relevant times, Defendant was an "employer," as that term is defined in 29
- 2 U.S.C. § 2101 (a)(1) and 20 C.F.R. § 639(a), and continued to operate as a business until it
- decided to order a mass layoff or plant closing at the Facilities.
- 4 31. At all relevant times, Plaintiff and the other similarly situated former employees
- were employees of Defendant as that term is defined by 29 U.S.C. §2101.
- 6 32. On or about August 31, 2011, the Defendant ordered a mass layoff or plant
- 7 closing at the Facilities, as that term is defined by 29 U.S.C. § 210l(a)(2).
- 8 33. The mass layoff or plant closing at the Facilities resulted in "employment losses,"
- 9 as that term is defined by 29 U.S.C. §2101(a)(2) for at least fifty of Defendant's employees as
- 10 well as more than one-third of Defendant's workforce at the Facilities, excluding "part-time
- employees," as that term is defined by 29 U.S.C. § 2101(a)(8).
- 12 34. The Plaintiff and the Class Members were terminated by Defendant without cause
- on their part, as part of or as the reasonably foreseeable consequence of the mass layoff or plant
- 14 closing ordered by Defendant at the Facilities.
- 15 35. The Plaintiff and the Class Members are "affected employees" of Defendant,
- 16 within the meaning of 29 U.S.C. § 210l(a)(5).
- 17 36. Defendant was required by the WARN Act to give the Plaintiff and the Class
- 18 Members at least 60 days advance written notice of their terminations.
- 19 37. Defendant failed to give the Plaintiff and the Class members written notice that
- 20 complied with the requirements of the WARN Act.
- 21 38. The Plaintiff is, and each of the Class Members are, "aggrieved employees" of the
- Defendant as that term is defined in 29 U.S.C. § 2104 (a)(7).

1	39.]	Defendant failed to pay the Plaintiff and each of the Class Members their
2	respective wage	es, salary, commissions, bonuses, accrued holiday pay and accrued vacation for
3	60 days followi	ing their respective terminations, and failed to make the pension and 401(k)
4	contributions ar	nd provide employee benefits under ERISA, other than health insurance, for 60
5	days from and a	after the dates of their respective terminations.
6	40.	The relief sought in this proceeding is equitable in nature.
7	<u> </u>	VIOLATION OF CALIFORNIA LABOR CODE - § 1400et seq.
8	41.	Plaintiff realleges and incorporates by reference all allegations in all proceeding
9	paragraphs.	
10	42. •]	Plaintiff and similarly situated employees who worked at or reported to
11	Defendant's fac	cilities in California ("the California Facilities"), and other "covered
12	establishments,	"are former "employees," of Defendant as defined in Labor Code § 1400(h).
13	43.	Defendant terminated the employment of Plaintiff and other similarly situated
14	employees, pur	suant to a "mass layoff," "relocation" or "termination" as defined in Labor Code
15	§ 1400(d-f) on	or about August 23, 2010 or thereafter.
16	44.	At all relevant times, Defendantwas an "employer" as defined in Labor Code
17	§ 1400(b).	
18	45.	Defendant violated Labor Code § 1401 by ordering a "mass layoff," "relocation"
19	or "termination	" in California without giving written notice at least 60 days before the order took
20	effect to (1) the	employees affected by the order, and (2) the Employment Development
21	Department, the	e local workforce investment board, and the chief elected official of each city and
22	county governn	nent within which the mass layoff, relocation or termination occurred. The "mass
23	layoff," "reloca	ation" or "termination" was not necessitated by a physical calamity or act of war.

46.	As a result of Defendant's violation of Labor Code § 1401, the other similarly
situated Calif	fornia employees are entitled to damages under § 1402(a), (b), in an amount to be
determined.	
47.	As a result of Defendant's violation of Labor Code § 1401, Defendant is liable
and subject to	a civil penalty of not more than five hundred dollars (\$500) for each day of the
violation, und	ler Labor Code § 1403.
48.	Plaintiff has incurred and the other similarly situated employees will incur
attorneys' fee	s in prosecuting this claim and are entitled to an award of attorneys' fees under
Labor Code §	1404.
	PRAYER FOR RELIEF
WHE	REFORE, the Plaintiff, individually and on behalf of all other similarly situated
persons, pray	s for the following relief as against Defendant:
A.	Certification of this action as a class action; and
B.	Designation of the Plaintiff as a Class Representative; and
C.	Appointment of the undersigned attorneys as Class Counsel; and
D.	A judgment in favor of the Plaintiff and the other similarly situated former
	employees equal to the sum of: their unpaid wages, salary, commissions, bonuses,
	accrued holiday pay, accrued vacation pay, pension and 401(k) contributions and
	other COBRA benefits, for 60 days, that would have been covered and paid under
	the then-applicable employee benefit plans had that coverage continued for that
	period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104
	(a)(1)(A)and the California Labor Code § 1402(a), (b), including any civil
	penalties; and

1	E.	Such other and further relief as this Court may deem just and proper.	
2 3 4	Dated: Septen	nber 2, 2011 Respectfully submitted,	
5 6 7 8 9 10 11 12		By: Nantiya Ruan(SBN230488) Jack A. Raisner (JR 6171[NY]) René S. Roupinian (RR 3883[NY]) OUTTEN & GOLDEN LLP 3 Park Avenue, 29 th Floor New York, New York 10016	
13 14		Telephone: (212) 245-1000 Facsimile: (212) 977-4005	
15 16 17	•	Attorneys for Plaintiff and the putative Class	7